

TENTATIVE RULINGS

FOR: September 2, 2015

Please note that the court will strictly enforce filing deadlines for papers filed in support of and in opposition to law and motion matters, and may exercise its discretion to disregard a late filed paper, pursuant to California Rules of Court, rule 3.1300(d).

When calculating filing deadlines for papers to be filed within a certain number of court days from a hearing date, parties should exclude court holidays and court closure days.

Unlawful Detainer Cases - No tentative ruling will be posted because access to records is not permitted until 60 days after the complaint is filed. Parties must appear for all unlawful detainer demurrers, motions to quash, and other matters.

Court Reporting Services - Official court reporters are not provided by the Court in proceedings for which such services are not legally mandated. These proceedings include civil law and motion matters. If counsel wish to have the hearing on their civil law and motion matter reported, they must arrange for a private court reporter of their choosing to be present. The Napa County Bar Association has further information about local private court reporters. Go to <http://napacountybar.org/court-reporting-services/> for further information.

Attorneys or parties should confer with each other to avoid having more than one court reporter present for the same matter.

PROBATE CALENDAR – Hon. Rodney Stone, Dept. F (Criminal Courts Bldg.- 1111 Third St.)

Estate of Eugene A. Frediani

PR18912

PETITION FOR APPOINTMENT OF SUCCESSOR CO-TRUSTEES

TENTATIVE RULING: GRANT petition.

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PETITION OF BENEFICIARY TO SURCHARGE TRUSTEE; TO REMOVE AND APPOINT SUCCESSOR TRUSTEE; TO DENY COMPENSATION TO TRUSTEE; FOR ATTORNEY'S FEES AND COSTS TO FILE THE PETITION; AND FOR REIMBURSEMENT OF COSTS AND EXPENSES OF ADMINISTRATION ADVANCED

TENTATIVE RULING:

Petitioner Wilson S. Shueh's petition is GRANTED IN PART AND DENIED IN PART WITHOUT PREJUDICE.

Wilson's requests to surcharge successor trustee Mayen Shueh, to find Mayen liable for breach of trust and breach of fiduciary duties, to deny trustee compensation to Mayen, and to collect additional compensatory damages are denied without prejudice. These requests are premature. The validity of the inheritance agreement needs to be determined in the civil action prior to resolution of these requests in this probate action.

Wilson's request to remove Mayen as successor trustee and to appoint a third-party professional successor trustee is granted. A trustee may be removed when there are irreconcilable conflicts between the trustee's personal interests and those of the trust. (*Estate of Hammer* (1993) 19 Cal.App.4th 1621, 1640-42.) Mayen is in a "contradictory and impossible position" of suing Wilson in the civil action while under a fiduciary duty to protect his interests in the probate action. Mayen is removed as successor trustee pursuant to Probate Code section 1564, subdivision (b)(9), which allows the Court to remove a trustee for "other good cause." The parties shall work in good faith to select a third-party professional successor trustee. If the parties are unable to do so within 10 calendar days of service of notice of entry of order, either party may submit an application for the Court to appoint a trustee under Probate Code section 15660, subdivision (d).

Wilson's request for Mayen to turn over the trust assets and documents to the professional fiduciary within 15 days after the issuance of the order removing Mayen as successor trustee is granted in part. Mayen shall hand over the assets and materials within 10 calendar days after the appointment of the professional fiduciary.

Wilson's request for attorney's fees and costs is denied. Mayen's request for attorney's fees and costs is denied.

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. F (Criminal Courts Bldg.-1111 Third St.)

CR Northbay, Inc. v. Marlin Leasing Corporation

26-61557

MOTION TO COMPEL

TENTATIVE RULING: Plaintiff/judgment creditor CR Northbay, Inc.'s motion to compel further responses to special interrogatories (set one) numbers 1-12 is MOOT. Plaintiff's counsel informed the Court that the case has settled.

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Rudy Chairez, et al. v. Adan Nieto, et al.

26-64465

MOTION TO CONTINUE TRIAL DATE

TENTATIVE RULING: Defendants Adan Cisneros Nieto and Double M Trucking's motion to continue the trial date is GRANTED. Defendants have demonstrated good cause. Counsel shall appear to discuss a new trial date.

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Robert B. Louer, et al. v. Howell Mountain Partners LP

26-65668

MOTION TO AMEND JUDGMENT TO ADD JUDGMENT DEBTORS

TENTATIVE RULING: Petitioner's Request for Judicial Notice is GRANTED. Petitioner's Motion is GRANTED. Code of Civil Procedure section 187 authorizes a trial court to amend a judgment to add additional judgment debtors at any time on the ground that a person is the alter ego of the original judgment debtor. (*Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 508.) "The greatest liberality is to be encouraged in the allowance of such amendments in order to see that justice is done." (*Id.*, quoting *Carr v. Barnabey's Hotel Corp.* (1994) 23 Cal.App.4th 14, 20.) "[A]n action to establish alter ego liability is not limited to a joint debtor proceeding." (*Brenelli Amedeo, S.P.A. v. Bakara Furniture, Inc.* (1994) 29 Cal.App.4th 1828, 1841.)